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#### REMARKS

Applicants respectfully request reconsideration of the above-identified patent application. Claims 2, 4, 5, 10-13, 16, 19, 20 and 22 remain in the application. Claims 2, 10, 13 and 16 are amended. Claims 1, 3, 6-9, 14, 15, 17, 18 and 21 are cancelled. Claim 22 is added. Applicants respectfully traverse the rejections as conceivably applied to the pending claims.

#### I. Invention Summary

The present invention relates to a device for lifting and manipulating landscaping materials, such as rocks, boulders and other large materials. The claimed invention can be generally classified as tongs in the sense that it includes pivotally interconnected arms that function in a tong-like manner. The tongs of the present invention are specially configured for the specific purpose of manipulating landscaping.

As defined in amended independent claim 2, the present invention is a device for lifting and manipulating landscaping having first and second arms, each having an upper portion, a pivot portion and a lower portion and having a generally uniform thickness. At least one of the pivot portions is offset, whereby the upper and lower portions of the first arm extend along a common plane with the upper and lower portions of the second arm. At least a portion of the upper portion of the first arm follows a first radius of curvature having a center on an exterior side of said first arm. The device also includes a jaw extending substantially perpendicular to a longitudinal extent of the first arm. The jaw includes a plurality of teeth oriented along a radius of curvature having a center on an interior side of the first arm. The jaw is manufactured from a segment of angle iron having a

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first leg and a second leg, with the plurality of teeth being defined in the first leg.

As defined in independent claim 16, the present invention is directed to a device for lifting and manipulating landscaping including a first arm, a second arm and a pivot joint pivotally connecting the first and second arms, each of which have a generally uniform thickness. The pivot joint is configured such that the upper portion and the lower portion of the first arm and the upper portion and the lower portion of the second arm extend through a common plane. The device also includes a lift ring, a first shackle interconnecting the first arm to the lift ring, and a second shackle interconnecting the second arm to the lift ring. A jaw is affixed to each arm and extends substantially perpendicularly to a longitudinal extent of the arm it is affixed to. Each of the jaws includes teeth oriented along a curve and is manufactured from a segment of angle iron having a first leg and a second leg, with the plurality of teeth being defined in the first leg. The arms are moveable between a first fully open position and a second closed position, and the first and second jaws are mounted to the respective arms such that the first legs of the respective first and second jaws extend along a substantially horizontal plane when the arms are in the fully open position.

Applicant respectfully submits that the subject matter of the pending claims is patentable over the art of record. The claims relate to a device that is specifically configured for use in lifting and/or manipulating landscaping, which may include extremely heavy and irregularly-shaped objects, such as landscaping rocks and boulders. Although the prior art discloses a wide variety of tong-like structures, it is respectfully submitted that the subject matter of the claims is not anticipated by or obvious in view of the prior art. Further, the sheer number of prior art references

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applied in this case illustrates the large number of tong-like devices that have been developed over the years, and emphasizes the great degree to which tong-like devices are customized for specific applications. The cited references highlight the patentability of the claimed invention by illustrating a wide variety of specialty tongs that do not teach or suggest the subject matter of the amended claims. It is worthwhile to note that a wide variety of patents have been granted to different tong-like devices configured for specific features, configured for particular applications, despite their general similarity. It is respectfully submitted that the distinctions between the claimed invention and the prior art devices are at least as material as the distinctions between the various patented prior art devices.

## II. §112 Rejection

Claims 2 and 4-13 were rejected under 35 USC §112, second paragraph, as being indefinite. Claims 6-9 have been cancelled. The pending claims have been amended as suggested by the Examiner. Accordingly, Applicant submits that this rejection has been overcome.

## III. §102(b) Anticipation Rejection Based on Furnia

Claims 2, 4 and 5 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 2,832,635 to Furnia. Although Applicant traverses this rejection, Applicant has herein added the recitations of claims 7, 8 and 9 to claim 2. Accordingly, Applicant respectfully traverses this rejection as conceivably applied to the pending claims.

It is well settled that anticipation can only be established by a single prior art reference that identically discloses each and every element of the claimed invention. Anticipation is

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not shown even if the difference between the claims and the prior art reference are insubstantial. Instead, the cited reference must show exactly what is claimed. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); *Structural Rubber Prod. Co. v Park Rubber Co.*, 749 F.2d 707, 223 U.S.P.Q. 1264 (Fed. Cir. 1984).

Applicant respectfully submits that the subject matter of the amended claims is not anticipated by Furnia. With respect to amended claim 2, Applicant respectfully submits that Furnia fails to disclose at least the following: (a) a jaw affixed to either arm, extending substantially perpendicularly to a longitudinal extent of either arm, (b) a jaw including a plurality of teeth, (c) the plurality of teeth being oriented along a radius of curvature having a center on an interior side of the first arm, and (d) the jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

Moreover, Applicant submits that the Furnia reference does not disclose a device having first and second arms that extend in a common plane. Although a portion of the arm near the pivot portion is offset from the remaining portion of the arm (as pointed out by the examiner on page 4 of the Office Action), it is not clear from the perspective or side views of Figs. 1-4 that the upper and lower portions of each of the arms actually extend in a common plane. Nor is this feature taught or suggested in the specification. Furnia not only fails to disclose aligned upper and lower arm portions, it also fails to disclose or even suggest the potential problems associated with misaligned tongs. For example, misaligned tong arms may create an undesirable degree of torque, which may have a negative effect on the pivot joint and may cause undesirable twisting of the object being lifted

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or otherwise manipulated. The arms of the present invention are aligned to avoid this and other issues associated with misaligned arms. For this additional reason, Applicant submits that Furnia does not disclose each element of the present invention as claimed in claim 2.

For at least these reasons, the anticipation rejection of amended independent claim 2 and dependent claims 4 and 5 should be withdrawn.

IV. §102(b) Anticipation Rejection Based on Rytell

As previously presented, claims 2, 4, 5 and 7 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,514,863 to Rytell. Although Applicant respectfully traverses this rejection, Applicant has added the features of claims 7, 8 and 9 to claim 2, as noted above. Accordingly, Applicant traverses this rejection as conceivably applied to the pending claims.

Applicant respectfully submits that the subject matter of the amended claims is not anticipated by Rytell. With respect to amended claim 2, Rytell does not disclose (a) a plurality of teeth being oriented along a radius of curvature having a center on an interior side of the first arm, or (b) the jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

Moreover, the arms of Rytell do not have a generally uniform thickness and, therefore, are not offset from the common plane as recited in amended claim 2. In contrast, the arms of Rytell include cut-outs near the pivot portion for allowing the arms to extend in a common plane. Thus, the arms are thinner and, therefore weaker, at the pivot area.

The device of the present invention, as recited in claim 2, is designed to provide the

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benefits of first and second arms extending in a common plane, along with the strength and durability provided by arms of a generally uniform thickness, which may be required for lifting and/or manipulating landscaping, including heavy rocks and the like. The device of Rytell, on the other hand, is adapted for pulling weeds and therefore does not require such strength and durability.

For at least these reasons, the anticipation rejection of independent claim 2 and dependent claims 4 and 5 should be withdrawn.

V. §103(a) Obviousness Rejection Based on the Combination of Rytell and Eckert

As previously presented, claims 8-12 were rejected as being unpatentable over Rytell in view of U.S. Patent 1,468,344 to Eckert. Claims 8 and 9 have been cancelled, with the subject matter of these claims being added to amended claim 2. Applicant respectfully traverses this rejection as conceivable applied to claims 2 and 10-12.

As previously discussed, Rytell fails to disclose (a) arms having a generally uniform thickness, (b) pivot portions of the arms being offset from a common plane such that the upper and lower portions of the first arm and the upper and lower portions of the second arm extend in a common plane, (c) a plurality of teeth being oriented along a radius of curvature having a center on an interior side of the first arm, or (d) the jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

The Examiner acknowledges that Rytell does not disclose a jaw with teeth oriented along a radius of curvature on the jaw and therefore cites Eckert, which discloses a tong-like pipe lifter including a pair of elongated lever members pivotally connected near their lower ends.

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However, Eckert does not address all of the above-noted shortcomings of Rytell. The Eckert device includes arms that are pivotally connected in a scissor-like manner. As a result, when assembled, the two arms extend through different planes from one another. Thus, the proposed combination of Rytell and Eckert does not disclose first and second arms that extend in a common plane. Additionally, the combination fails to disclose a jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

Moreover, the modification of Rytell to include the Eckert jaw would destroy the intended function of the jaw. The Eckert device, which is configured to grip a long pipe from the side, includes jaws that extend from only one side of the levers so that a pipe can be captured in the jaw along side the arms. Thus, the jaws *must* be offset to function properly. In Rytell, the jaws are at the center of the arms and are not offset to either side. If the Eckert jaw replaced jaws of Rytell, the Eckert device could not function as a pipe lifter because the pipe would be obstructed by the arms. In other words, the jaws of Eckert rely on the offset relationship between the jaws and arms to function.

Additionally, there is no teaching, suggestion or motivation in any of the prior art of record to combine Rytell with Eckert. “[I]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 147 U.S.P.Q. 391 (C.C.P.A. 1965). The curved jaws extending from one side of the scissor-like arms of Eckert are specifically designed to grasp a pipe.

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A person of ordinary skill in the art would not have singled out the curved jaws of Eckert for combination with another reference and also centered the jaws at the end of a set of tong arms without some teaching, suggestion or motivation.

For at least the reasons discussed above, the rejection of claims 2 and 10-12 should be withdrawn.

VI. §103(a) Obviousness Rejection Based on the Combination of Furnia and Miller or Rotollo

As previously presented, claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Furnia in view of either U.S. Patent 2,526,085 to Rotollo or U.S. Patent 3,572,808 to Miller. Applicant respectfully traverses this rejection as conceivably applied to claim 13.

As discussed above, Furnia fails to disclose (a) a jaw affixed to either arm, extending substantially perpendicularly to a longitudinal extent of either arm, (b) a jaw including a plurality of teeth, (c) the plurality of teeth being oriented along a radius of curvature having a center on an interior side of the first arm, or (d) the jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

The Examiner acknowledges that Furnia also does not disclose a handle and, therefore, cites Miller and Rotollo for the disclosure of a handle on a tong-type device. Applicant respectfully submits that neither Rotollo nor Miller does anything to overcome the above-listed deficiencies of Furnia. Miller discloses a tong-type device adapted to lift beams and girders, having inward-facing flanges at the lower ends of the arms and a handle attached to each of the tong arms. However, the arms are connected in a scissor-like manner and do not extend in a common plane.



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Rotollo also discloses a device having a handle on at least one of the tong arms or levers. However, the arms of Rotollo are similar to the arms of Miller in that they move in a scissor-like fashion and do not extend in a common plane.

For at least these reasons, Applicant respectfully submits that the rejection of claim 13 should be withdrawn.

VII. §103(a) Obviousness Rejection Based on the Combination of Kifer and Furnia

As previously presented, claims 2, 4, 5 and 7 were rejected under 35 USC §103(a) as being unpatentable over Kifer in view of Furnia. Although Applicant traverses this rejection, Applicant has amended claim 2 to include the subject matter of claims 7, 8 and 9. Accordingly, Applicant respectfully traverses this rejection as conceivably applied to the pending claims.

Kifer is a design patent for an ornamental design for lifting tongs. Kifer appears to disclose tongs that follow a radius of curvature having a center on an exterior side of the respective tong. However, the tongs are misaligned and are not positioned to extend in a common plane.

As noted above, Furnia discloses log tongs having pivot portions that are offset from the remaining portions of the arms, but does not clearly show tong arms positioned in a common plane.

Applicant respectfully submits that the subject matter of the amended claims is not obvious in view of Kifer and Furnia. With respect to amended claim 2, Applicant respectfully submits that the proposed combination fails to disclose (a) first and second arms extending in a common plane, (b) a jaw having a plurality of teeth that are oriented along a radius of curvature

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having a center on an interior side of a first arm, and (c) the jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

Furthermore, Applicant submits that combining Kifer with Furnia would destroy the intended function of Kifer. The arms of Kifer must be misaligned to function properly. Specifically, the Kifer configuration allows the jaws to be opened by sliding the upper portion of one arm *past* the lower portion of another arm. This movement would not be possible in the configuration of Furnia, in which the lower portions of one arm cannot slide past the upper portion of another arm because of the offset at the pivot region of the arms. Therefore, the combination of the misaligned arms of Kifer with the aligned configuration of Furnia would destroy the function of Kifer.

For at least these reasons, the rejection of claims 2, 4 and 5 should be withdrawn.

VIII. §103(a) Obviousness Rejection Based on the Combination of Kifer, Furnia and Eckert

As previously presented, claims 8-10 and 16-19 were rejected under 35 USC §103(a) as being unpatentable over Kifer and Furnia and further in view of Eckert. Applicant notes that the recitations of claims 8 and 9 have been added to claim 2 and that the recitations of claims 17 and 18 have been added to claim 16. Applicant respectfully traverses this rejection as conceivably applied to the pending claims.

The deficiencies of each of these references has been discussed above. Specifically, with respect to claims 10, 16 and 19, the proposed combination fails to disclose (a) a pivot portion of one of the arms being offset such that the first and second arms extend in a common plane or (b) a jaw manufactured from a segment of angle iron having a first leg and a second leg, with a plurality of

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teeth being defined in the first leg.

Further, the modification of Kifer and Furnia to include the Eckert jaw would destroy the intended function of the jaw. The Eckert jaw is offset to one side of the arms so that a pipe can be captured in the jaw along side the arms. Thus, the jaws *must* be offset to function properly. In Kifer, the jaws are positioned at the center of the arms and are not offset to either side. If the Eckert jaw replaced the jaws of Kifer, the Eckert device could not function as a pipe lifter because the pipe would be obstructed by the arms. In other words, the jaws of Eckert rely on the offset relationship between the jaws and arms to function.

Additionally, there is no teaching, suggestion or motivation in any of the prior art of record to combine Kifer and Furnia with Eckert. The curved jaws extending from one side of the scissor-like arms of Eckert are specifically designed to grasp a pipe. A person of ordinary skill in the art would not have singled out the curved jaws of Eckert for combination with two other references, one of which includes centered jaws and the other of which does not include jaws at all, without some teaching, suggestion or motivation. Applicant respectfully submits that the proposed combination of Kifer, Furnia and Eckert is based on impermissible hindsight reasoning based on Applicant's own disclosure.

For at least the reasons presented above, Applicant respectfully submits that the rejection of claims 10, 16 and 19 should be withdrawn

IX. §103(a) Obviousness Rejection Based on the Combination of Kifer, Furnia and Miller

As previously presented, claims 11-13 and 20 were rejected under 35 USC §103(a) as

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being unpatentable over Kifer and Furnia and further in view of Miller. Applicant respectfully traverses this rejection as conceivably applied to the pending claims.

As discussed above, neither Furnia nor Kifer discloses (a) first and second arms that extend in a common plane, (b) a jaw having a plurality of teeth that are oriented along a radius of curvature having a center on an interior side of a first arm, or (c) the jaw being manufactured from a segment of angle iron having first and second legs, with the plurality of teeth defined in the first leg.

Miller does nothing to address these shortcomings. Miller discloses a device for lifting construction beams and girders with gripping members that are particularly configured for that purpose. The device includes arms that are pivotally connected in a scissor-like manner. As a result, when assembled, the two arms extend through different planes from one another. Accordingly, no combination of Kifer, Furnia and Miller could result in the subject matter of amended claims 11-13 and 20.

Furthermore, the Examiner has not suggested why Furnia, Kifer and Miller would be combined for any reason other than a hindsight attempt to reconstruct the present invention. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct 1727, 1741 (2007). The tong device of Miller includes gripping members that have inward-facing flanges adapted to lift construction beams and girders. A person of ordinary skill in the art would not have singled out the gripping members of Miller for combination with a device for lifting logs without some teaching,

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suggestion or motivation.

Applicant respectfully submits that for at least these reasons, the rejection of claims 11-13 and 20 should be withdrawn.

X. §103(a) Obviousness Rejection Based on the Combination of Miller and Eckert

As previously presented, claims 16-18 and 20 were rejected under 35 USC §103(a) as being unpatentable over Miller in view of Eckert. Applicant respectfully traverses this rejection as conceivably applied to the pending claims.

Applicant respectfully submits that the proposed combination does not disclose each element of the amended claims. The deficiencies of both Miller and Eckert are discussed above. Specifically with respect to amended claims 16-18 and 20, these references fail to disclose a pivot joint configured such that first and second arms of the device extend in a common plane. In contrast, both Miller and Eckert disclose a tong-type device having arms that move in a scissor-like motion. As a result of the straight, scissor-like overlap, the ends of the Miller and Eckert devices are not in alignment. Rather, the ends are misaligned and, therefore, move in different planes offset by the thickness of the tongs. The misalignment between the tongs may create an undesirable degree of torque, which may have a negative affect on the pivot joint and may cause undesirable twisting of the object being lifted or otherwise manipulated. Miller and Eckert not only fail to disclose aligned upper and lower arm portions, but also fail to disclose or even suggest the potential problems associated with misaligned tongs.

Nor do Miller and Eckert disclose jaws manufactured from a segment of angle iron

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having a first leg and a second leg, with a plurality of teeth being defined in the first leg.

Furthermore, Applicant submits that modifying Miller to include an Eckert jaw would destroy the intended function of the jaw. As noted above, the Eckert jaw is offset to one side of the arms so that a pipe can be captured in the jaw along side the arms. In Miller, the gripping members are positioned at the center of the arms and are not offset to either side. If the Eckert jaw replaced the gripping members of Miller, it could not function as a pipe lifter because the pipe would be obstructed by the arms. In other words, the jaws of Eckert rely on the offset relationship between the jaws and arms to function. Similarly, the modified version of Miller, having the specially-configured gripping members replaced with jaws adapted to grasp a pipe, could no longer function to lift beams or girders.

Applicant respectfully submits that for at least the reasons presented above, the rejection of claims 16 and 20 should be withdrawn.

XI. Conclusion

In conclusion, it is respectfully submitted that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

Respectfully submitted,

By: Warner Norcross & Judd LLP

/Deidre D. Link/

Deidre D. Link

Registration No. 57,184

900 Fifth Third Center

111 Lyon Street, N.W.

Grand Rapids, MI 49503-2487

(616) 752-2753

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